



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

August 13, 2018

Ms. Mary Ridgeway
Division Administrator
Federal Highway Administration
Delaware Division
1201 College Park Road, Suite 102
Dover, DE 19904

Dear Ms. Ridgeway:

The purpose of this letter is to provide supporting information that demonstrates DelDOT's commitment to fund the Park Avenue Relocation project in Georgetown, Sussex County. DelDOT is formally requesting the Federal Highway Administration's (FHWA) approval of the Finding of No Significant Impact (FONSI) in conjunction with the final Environmental Assessment (EA) that was completed for the Park Avenue Relocation Project.

In DelDOT's most recent update to the Capital Transportation Program (CTP) FY 2019 – FY 2024, funding continues to be programmed for the entire project beginning in FY 2019.

Table 1: Park Avenue Relocation

Phase	Year	Funding (millions)
Preliminary Engineering (PE)	FY 2019/FY 2020/FY 2021/FY 2022	\$0.4/\$0.2/\$0.2/\$0.1
Right-of-Way (ROW)	FY 2021/FY 2022	\$3.5/\$3.5
Construction (C)	FY 2023/FY 2024	\$15.0/\$15.0
Total		\$37.9

It is DelDOT's intention to construct the Park Avenue Relocation project in two phases, the first phase being the new-alignment relocation of existing Park Avenue to the intersection of South Bedford Street and Arrow Safety Road. The second phase would consist of the on-alignment improvements to existing Park Avenue approaching the intersection with US 9.

It is anticipated that the funding summarized above is reasonably expected to be available to complete both phases of the project within the referenced time frame.

Your approval of the Park Avenue EA FONSI will allow DelDOT to proceed with the proposed improvements. If you have questions or comments, please contact Mr. Bryan Behrens from Project Development by e-mail at Bryan.Behrens@state.de.us, or by phone at (302) 760-2756. As always, please feel free to contact me directly.

Sincerely,



Robert McCleary, P.E.
Chief Engineer

Enclosures

cc: Michael Simmons, Project Development
Bryan Behrens, Project Development
John Caruano, Environmental Studies

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

FINDING OF NO SIGNIFICANT IMPACT

**PARK AVENUE RELOCATION
GEORGETOWN, SUSSEX COUNTY, DELAWARE**

August 2018

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
FINDING OF NO SIGNIFICANT IMPACT
PARK AVENUE RELOCATION
GEORGETOWN, SUSSEX COUNTY, DELAWARE

The Federal Highway Administration (FHWA) has determined that the Park Avenue Relocation will have no significant impact on the natural and human environment. This determination has been made based on the Park Avenue Relocation Environmental Assessment (EA) (June 2018), the supporting technical reports (as listed in this Finding of No Significant Impact [FONSI]), review of the comments received during the EA availability period and the responses to those comments (Attachment A), and the mitigation commitments included in the EA and summarized in this FONSI.

PROJECT PURPOSE AND NEED

The purpose of the Park Avenue relocation, being undertaken by Delaware Department of Transportation (DelDOT), is to improve the traffic operations and safety of the US 9 truck bypass from east of Georgetown to US 113. The primary need for the Park Avenue project is to improve traffic operations and safety. The existing truck route between US 9 and US 113 has several turning movements that hinder traffic operations; the roadway width is narrow and does not meet current design for a truck route; and, the average number of crashes along the truck route between US 113 and US 9 are higher than the state and Sussex County averages. Secondary needs are to support economic growth, and to support federal, state, and local initiatives by focusing on improving transportation infrastructure to provide safe and convenient road access across the region and to areas zoned for business/industrial use. Multiple federal, state, and local initiatives have expressed a need to improve freight travel across the region and to encourage freight routes to be located near compatible land use or zoned areas where feasible.

SELECTED ALTERNATIVE

Six Build Alternatives were developed and then screened and compared by DelDOT during the conceptual design phase (refer to Figure 2-2 of the EA). All of the alternatives meet the primary needs of the project, improving traffic operations and safety of the US 9 truck bypass, but not all of the alternatives meet the secondary needs of the project. The six Build Alternatives and the No-Build Alternative were evaluated based upon the following criteria: improve truck route connectivity; minimize right of way impacts / displacements; minimize wetland, stream, jurisdictional ditch, and forest impacts; and minimize economic impact (refer to Table 2-1 of the EA).

The No-Build Alternative would not satisfy the identified needs of the project as it would not improve traffic operations and safety along Park Avenue. The No-Build Alternative is also inconsistent with local plans and would not accommodate growth at the Delaware Coastal Airport. Alternatives 1, 2, and 3 were eliminated from consideration as they travel through the central portion of the Delaware Coastal Airport's runway protection zone (RPZ) of the proposed extension of Runway 4. Per Federal Aviation Administration (FAA) current design standards, as well as Sussex County officials, failure to keep this area clear would prevent the extension of the runway and the associated growth at the airport. These alternatives therefore fail to meet the secondary need of the project – to support economic growth. Alternative 4 compared with Alternatives 5 and 6 would reduce the connectivity of the truck route, adding an additional 0.7 miles to the truck route bypass. Additionally, as compared with Alternatives 5 and 6, Alternative 4 would require the full acquisition of twice as many properties (four properties compared with two properties) and would require partial acquisition of 20 percent more properties (106 properties compared with 88 properties). Alternative 5 compared with Alternative 6 has more than three times as many wetland impacts (0.90 acres compared with 0.29 acres); and has slightly more forest impacts.

Alternative 6 was chosen as the Selected Alternative. The Selected Alternative will begin at Arrow Safety Road and straighten the alignment of the truck bypass by creating an additional leg at the intersection with South Bedford Street. The Selected Alternative will then travel along a new alignment to connect to Park Avenue east of the Delmarva Central Railroad (formerly Norfolk Southern Railroad) tracks. The existing western Delmarva Central Railroad crossing at Park Avenue will be removed and a new at-grade railroad crossing will be created further south along the railroad where the Selected Alternative will cross. Per FAA runway guidelines related to approach clearance, a grade separation was not permissible due to close proximity to the runway terminus. Norfolk Southern was agreeable to the new at-grade crossing with the provisions that the existing crossing be removed and the new crossing would be installed to meet current safety standards. The Selected Alternative will be located south of the central portion of the RPZ associated with the proposed growth of the Delaware Coastal Airport.

The Selected Alternative meets the project purpose and needs identified by FHWA and DelDOT for improving traffic and safety operations; supporting economic growth, supporting federal, state and local initiatives, and minimizing impacts to resources within the study area.

Improve Traffic and Safety Operations

The Selected Alternative would improve traffic and safety operations by improving the roadway alignment and typical section, providing a continuous route around Georgetown, connecting US 113 west of Georgetown to US 9 east of Georgetown, and improving the Park Avenue and US 9 intersection and the Park Avenue and South Bedford Street/Arrow Safety Road intersection.

Support Economic Growth

The Selected Alternative allows for the future growth of the Delaware Coastal Airport as proposed by Sussex County (Sussex County, 2016), thus potentially encouraging economic development in the region.

Support Federal, State and Local Initiatives

The Selected Alternative is consistent with the federal initiative, *Grow America Act*, the state initiative, of improving the Maryland/Delaware 404 Lewes Freight Corridor, and the local initiatives to improve access to the Delaware Coastal Airport as well as areas zoned for business uses, and to upgrade Park Avenue to accommodate the increase in truck traffic to the Sussex County Industrial Park. The Selected Alternative is also consistent with the Sussex County Plan, the Town of Georgetown Comprehensive Plan, and the Sussex County 2017-2022 Capital Transportation Program-Request.

Impacts

In addition to addressing the project purpose and needs, the Selected Alternative would have minimal impact to environmental, cultural, and socioeconomic resources. No adverse impacts were identified to the following resources: demographics and neighborhoods; environmental justice; community facilities; land use; floodplains; threatened, endangered, and special status species; public parks; and architectural resources. Archaeology identification and coordination is ongoing. The Selected Alternative would affect 90 properties and would cause two relocations.

The Selected Alternative would impact 0.29 acres of wetlands, 0.3 acres (1,185 linear feet) of streams, 0.08 acres (847 linear feet) of jurisdictional ditches, 15.87 acres of forested land, and 0.15 (451 linear feet) of tax ditches. These impacts are based on the conceptual design and may change as design progresses. Additionally, wetlands, streams, and jurisdictional ditches have not yet been confirmed by United States Army Corps of Engineers (USACE) and are subject to change. The Selected Alternative will have minimal impacts to water quality during roadway construction activities.

The Selected Alternative is not expected to significantly impact air quality and would not cause or contribute to a new violation of the Carbon Monoxide (CO) National Ambient Air Quality Standards

(NAAQS). Temporary air quality impacts from construction activities would consist primarily from diesel powered construction equipment and fugitive dust. The Selected Alternative would cause noise impacts to 31 residential parcels; however, given the right-of-way limitations and driveway access requirements, it was determined that it would not be feasible and reasonable to construct a noise wall in any of the impacted noise sensitive areas (NSAs).

The Selected Alternative has the potential to encounter subsurface contamination during construction from two Controlled Recognized Environmental Conditions. The Sussex County Fire Marshall property would be within the right of way of the Preferred Alternative and the Controlled REC that is approximately 250 feet from the Preferred Alternative, First State Chevrolet. While the Controlled RECs are listed as case closed, there is the potential that these previously reported releases or spills may have impacted soil and/or groundwater within the project area.

Mitigation Measures

Avoidance and minimization efforts were incorporated into the Selected Alternative; however, unavoidable impacts, as described above, would occur as part of project implementation. The following summarizes how adverse impacts will be avoided, minimized, and mitigated for the Selected Alternative.

- **Cultural Resources** – DelDOT is committed to completing the archaeological analysis necessary to determine the National Register of Historic Places (NRHP) eligibility of archaeological resources that may be affected by ground-disturbing activities. Additional efforts will include a Phase I archaeological identification survey and consultation on the need for further investigation. For any historic properties, both above-ground and archaeological, that are identified and affected, DelDOT will make a reasonable effort to avoid these sites or to minimize impacts to them. If the affected historic properties cannot be avoided, DelDOT will apply the Criteria of Adverse Effect in accordance with 36 CFR §800.5 and traditional or alternative forms of mitigation will be utilized. DelDOT coordinated with the Delaware State Historic Preservation Office and FHWA to develop a Programmatic Agreement (PA) to outline the final steps and commitments required to complete the Section 106 consultation process for the project. A signed copy of this PA is included in Attachment B.
- **Section 4(f) Resources** – Should it be determined that previously unidentified historic property(s) are located within the Area of Potential Effect of the Selected Alternative, an analysis would be performed to determine if there is a Section 4(f) use of that property, and documentation would be performed as necessary and included in a re-evaluation.
- **Wetlands and Surface Waters** – As the design is refined, impacts to wetlands and streams will be avoided to the maximum extent practicable. The use of retaining walls and steep side slopes may be considered to avoid impacts from lateral encroachment. Compensation for any unavoidable impacts to streams and wetlands will be provided in accordance with the 2008 Compensatory Mitigation Rule. In accordance with the existing regulations and standard permit conditions, all areas with temporary impacts would be required to be restored to the areas' original contours and re-vegetated with the same or similar species.
- **Tax Ditches** – DelDOT will maintain the continuity and flow of tax ditches, and will ensure that maintenance activities are still possible.
- **Erosion and Sediment Control** – During construction, the contractor will prepare a project-specific erosion, sediment, and stormwater management plan and the contractor would adhere to applicable erosion and sediment control and stormwater measures and the associated required monitoring protocols, as prescribed in the current regulations. Post construction, stormwater management facilities will be used to treat runoff from the roadway in compliance with the Delaware Sediment and Stormwater Regulations.
- **Threatened, Endangered, and Special Status Species** – Bridges and culverts would be designed to ensure adequate hydraulic openings are in place so that hydrologic flow patterns are not disrupted. Further coordination would be conducted with resource agencies during the 404/401 permitting process.

- Forest – In accordance with Title 17, Chapter I, Subchapter VII of the Delaware Code and the DelDOT Road Design Manual, mitigation may also be required for tree impacts. Removal of 10 or fewer trees for a roadway construction project would require planting at least one new tree for every tree removed. Removal of more than 10 but fewer than 50 trees for a roadway construction project would require planting two trees for each tree removed. Removal of 50 or more trees for a roadway construction project would require reforestation of at least one acre of land for every acre of trees removed.
- Air Quality – Construction activities will be performed in accordance with DelDOT's Road Design Manual. The specifications require compliance with all applicable local, state, and federal regulations. Measures will also be taken to minimize exposed earth by stabilizing with grass, mulch, pavement, or other cover as early as possible, applying water as a dust-stabilizing agent to working or haulage areas, covering, shielding, or stabilizing of stockpiled materials as necessary, and the use of covered trucks.
- Noise – During the construction phase of the project, all reasonable measures would be taken to minimize noise impact from these activities.
- Hazardous Materials – Prior to or during right of way acquisition, a Phase I Environmental Site Assessment (ESA), consistent with the American Society for Testing and Materials (ASTM) method E1527-13 is recommended. Findings from the ASTM Phase I ESA would be used to determine the applicability for a Phase II ESA (ASTM E1903-11). Any necessary remediation would be conducted in compliance with federal and state environmental laws and would be coordinated with the U.S. Environmental Protection Agency, Delaware Department of Natural Resources and Environmental Control, and other regulatory agencies, as necessary. The handling and disposal of contaminated materials by the contractor would comply with DelDOT Specification #202560 to ensure handling is consistent with state and federal regulations.
- Indirect and Cumulative Effects – To address the role of the potential project impacts on natural resources, there will be enhancement and restoration of waterway functions and values where possible. Strategies to be considered in consultation with the USACE and DNREC include channel restoration, removal of invasive plant species, and reintroduction of native plant materials.
- Right of Way/Relocations – Owners of property that would require right of way acquisitions or easements will be contacted by DelDOT well in advance of construction and will be compensated for impacts through an appraisal and negotiation process, in accordance with the Uniform Relocation and Real Property Acquisition Act of 1970, as amended. Compensation will be provided for any portion of property deemed necessary for construction as well as for the impact or relocation of any existing features within those areas.

Environmental Assessment and Technical Reports

The EA was approved for public availability and release to the public by the FHWA, Delaware Division on June 7, 2018. The public comment period on the EA began on June 18, 2018 and ended on July 17, 2018. A public hearing was not requested. DelDOT issued a press release to the media in Sussex County regarding the EA availability and advertisements were placed in the Cape Gazette, Coastal Point, Delaware State News, Milford Chronicle, Seaford Star/Laurel Star, Sussex Countian, Sussex Post, and The Wave (Attachment C). The EA was available for review and download through the DelDOT website.

Technical reports have been prepared for the following subject areas and are included in the project technical file:

- Air Quality Technical Report
- Hazardous Materials Technical Report
- Natural Resources Technical Report
- Noise Technical Report
- Socioeconomic Technical Report

Technical files are being maintained for the following subject areas:

- Wetlands (Wetland Delineation Report)
- Public Involvement and Agency Coordination (Meeting Minutes)
- Cultural Resources (*Historic Architecture Survey and Determination of Eligibility Report, Park Avenue Relocation Project* (AECOM, 2018))

During the comment period, hard copies of the EA and Technical Reports were also available for review at the following locations:

- DelDOT Administration Building, Dover, DE
- DelDOT South District, Georgetown, DE
- FHWA Delaware Division, Dover, DE
- Delaware Technical Community College, Georgetown, DE

The public had the opportunity to provide written comments throughout the comment period. All comments provided were reviewed and addressed. Comments and responses are included in the Environmental Assessment Responses to Comments Report (August 2018) (Attachment A).

Finding of No Significant Impact

The FONSI is based on the project record including:

- Park Avenue Relocation Environmental Assessment (June 2018) and associated documents and studies referenced in this document; and
- Environmental Assessment Responses to Comments Report (August 2018) (Attachment A).
- Programmatic Agreement (Attachment B).

These documents and supporting documentation find that there is no practical alternative to construction of the Proposed Action, and the Proposed Action includes all practical measures to minimize harm to natural, cultural, and socioeconomic resources, which may result from the proposed project.

The EA and EA Responses to Comments Report have been independently evaluated by the FHWA and determined to discuss adequately and accurately the need, environmental issues, and impacts of the proposed project and appropriate mitigation measures. They provide sufficient evidence and analysis for determining that an Environmental Impact Statement (EIS) is not required. The FHWA takes full responsibility for the accuracy, scope, and content of the EA and associated documentation.

Pursuant to:

42 U.S.C. §4231-4347

40 CFR §1500-1508

23 CFR §771

36 CFR §800

49 U.S.C. §303(c)

23 CFR §774

16 U.S.C. §1531-1544

33 U.S.C. §1251 et seq. (1972)

Executive Order 11988

Executive Order 11990

Executive Order 12898

8/14/2018
Date

Mary Ridgeway
Mary Ridgeway, P.E., Delaware Division Administrator

Federal Highway Administration – Delaware Division

Attachments

- A. Environmental Assessment Comment Response Document, August 2018
- B. Signed Programmatic Agreement
- C. Advertisements of the Notice of Availability of the Environmental Assessment

Attachment A

Environmental Assessment Comment Response Document

**Park Avenue Relocation
Georgetown, Sussex County, Delaware
Environmental Assessment Comment Response Document
August 2018**

This Comment Response Document provides responses to comments received on the Park Avenue Relocation Environmental Assessment (EA) which was provided to the public for their review and comment on June 18, 2018. The EA was made available at the following locations: Delaware Department of Transportation (DelDOT) Engineering District building in Dover, Delaware, DelDOT South District office in Georgetown, Delaware, Federal Highway Administration (FHWA) Delaware Division office, and Delaware Technical Community College in Georgetown, Delaware. Written comments were accepted on the EA until July 17, 2018 and are addressed below.

The Comment Response Document is divided into two main sections: Comments Received from **Federal, State, and Local Agencies** and Comments Received from the **General Public and Stakeholders**.

Each comment author is noted followed by the agency or organization they represent, if applicable. The comment author's mailing address is also noted, if provided. The full text of the comment, and the Project Team's response, is provided following the author's information.

Comments Received from Federal, State, and Local Agencies

Comment #1: Aaron Blair. Physical Scientist, U.S. Environmental Protection Agency (EPA) Mid-Atlantic Region 3, Environmental Assessment and Innovation Division. 1650 Arch Street, Philadelphia, PA 19103. (215) 814-2748. Blair.AaronM@epa.gov. July 17, 2018.

Comment: Thank you for the opportunity to review the Environmental Assessment (EA) for the Park Avenue Relocation Project around Georgetown, Delaware. The EA discusses alternatives to provide operational and safety improvements of the US 9 Truck Bypass; secondary needs are to support economic growth and generally improving infrastructure. We have reviewed the EA in accordance with the National Environmental Policy Act (NEPA) of 1969, Section 309 of the Clean Air Act and the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR 1500-1508). Based on our review, we have the following comments:

1. 2.2: EPA suggests that the study would benefit from clearly identifying Primary and Secondary needs and providing better explanation of the weighting in the screening process. It appears that there is disproportionate weighting to the Secondary Needs. EPA would be pleased to discuss this concern at your convenience.

Response: *Section 1.3 of the EA describes in detail the primary need of the project, improve traffic operations and safety, as well as the secondary needs of the project, support economic growth and support federal, state, and local initiatives. As noted in Section 2.2.3 of the EA, all of the alternatives meet the primary needs of the project, but not all of the alternatives meet the secondary needs of the project. Therefore, the alternatives were evaluated against screening criteria that were developed to determine how well each alternative met the secondary needs of the project, as well as minimizing social and environmental impacts.*

2. 2.2: Many of the alternatives were dismissed due to interference with the central portion of the runway protection zone (RPZ) of any extension of Runway 22 at Delaware Coastal Airport. It may be beneficial to the audience and to the Project to explain whether an extension of Runway 22 is planned and if so, what stage of planning it is in. Also, if any FAA exemptions exist for placement of roadways of certain traffic volumes within an RPZ, they should be incorporated into the document.

Response: *DelDOT has coordinated extensively with Federal Aviation Administration (FAA) to identify within which areas of the RPZ the roadway could be placed. As discussed in Section 2.2.2 of the EA, per FAA current design standards related to RPZs, the roadway would need to be outside of the central portion of the RPZ. The extension of Runway 22 is planned; however, it cannot progress unless Park Avenue is relocated.*

3. 3.4.3: It may be beneficial to describe how the project would impact those waterbodies designated as impaired stream segments within the study area and whether BMPs in these waterbodies may differ.

Response: *As described in Section 4.3 of the Natural Resources Technical Report, the Selected Alternative could result in temporary impacts to water quality during roadway construction activities through increased sedimentation from land disturbing activities and the potential for occurrences of fuel spills or hydraulic spills from construction equipment. During construction, the contractor will adhere to standard erosion and sediment control and stormwater measures and the associated required monitoring protocols, as prescribed in the*

current regulations. Additionally, DelDOT's practice is to maintain both water quality and quantity post-development equal to or better than pre-development. Best management practices (BMPs) will be developed in accordance with DelDOT's Erosion and Sediment Control and Stormwater Management Design Guide.

4. 3.4.6: Confirmation of wetland and stream impacts of preferred alternative should be made with USACE. Wetland mitigation may be a required condition of the CWA 404 permit. Please consult with the USACE and EPA to determine appropriate measures regarding compensatory mitigation to mitigate potential wetland function and value loss.

Response: DelDOT will coordinate with United States Army Corps of Engineers (USACE) to confirm the delineation of the wetlands and streams, as well as the estimation of the impacts of the Selected Alternative. DelDOT will consult with the USACE and EPA to determine appropriate measures regarding compensatory mitigation to mitigate potential wetland function and value loss. This information would be detailed in the Clean Water Act (CWA) Section 404 permit application.

5. 3.7: We recommend EPA Region 3 staff be contacted if results of the ASTM Phase I ESA or other hazardous materials investigations warrant further analysis.

Response: DelDOT will contact EPA Region 3 staff should the results of the ASTM Phase I Environmental Site Assessment (ESA) or other hazardous materials investigations warrant further analysis.

6. 3.8: We recommend erosion and sedimentation controls, as well as stormwater management measures, be inspected regularly throughout construction for potential failures or deficiencies and repaired promptly to avoid direct and indirect impacts to waters and aquatic organisms.

Response: As described in **Section 4.3 of the Natural Resources Technical Report**, during construction, the contractor will adhere to standard erosion and sediment control and stormwater measures and the associated required monitoring protocols, as prescribed in the current regulations.

7. 3.8: EPA suggest the final EA clarify if crossing culverts specifically for wildlife are proposed as part of the crossing design. Culverts for maintaining flow patterns may not be effective in minimizing the effects of fragmentation of core areas for medium-large sized mammals. The U.S. Forest Service has a terrestrial wildlife crossing protocol which may be helpful if habitat fragmentation and wildlife crossing is a concern for this Project.

<https://www.fs.fed.us/wildlifecrossings/glossary/documents/WildlifeCrossingStructureTypesByFunctionAWHI.pdf>

Response: Since the comments do not require any changes in the findings of the EA, a Final EA is not being prepared. As described in **Section 7.3.2 of the Natural Resources Technical Report**, implementation of the Selected Alternative will not impact wildlife corridors within the study area but will impact three hub areas and three core areas. Impacts to hub and core areas are expected to be minimal since roads and railroads already bisect these areas. The Selected Alternative will cross along the edges of the hub and core areas, and will not cross through undisturbed, old-growth forest. Crossing culverts specifically for wildlife will be considered during final design.

8. We recommend the Final EA mention if the 15.87 acres of forest impacts under the preferred alternative will be mitigated, consistent with state procedure (Delaware Forest Conservation Act).

Response: *The 15.87 acres of forest impacts noted in the EA are estimated impacts. Once design is finalized, the applicable ratio of mitigation will be identified in accordance with Title 17, Chapter I, Subchapter VII of the Delaware Code and the DelDOT Road Design Manual. As discussed in **Section 3.4.6 of the EA** and **Section 9.3 of the Natural Resources Technical Report**, the removal of 10 or fewer trees for a roadway construction project would require planting at least one new tree for every tree removed. Removal of more than 10 but fewer than 50 trees for a roadway construction project would require planting two trees for each tree removed. Removal of 50 or more trees for a roadway construction project would require reforestation of at least one acre of land for every acre of trees removed.*

Comment #2: Trevor Clark, Fish and Wildlife Biologist. U.S. Fish and Wildlife Service, Chesapeake Bay Ecological Services Field Office, Endangered and Threatened Species Branch, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401. (410) 573-4527. trevor_clark@fws.gov. July 17, 2018.

Comment: Please go to the following website to determine if federally endangered and/or threatened species within the Maryland, Delaware and Washington D.C. region have the potential to be impacted by your proposed project: <http://www.fws.gov/chesapeakebay/EndSppWeb/-ProjectReview/Index.html> . Please contact me if you have any questions. Thanks

Response: *As described in **Section 3.4.4 of the EA**, DelDOT coordinated with the U.S. Fish and Wildlife Service (USFWS) and queried USFWS' Information for Planning and Conservation (IPaC) database to identify any documented threatened, endangered, or special status species within the study area. As further described in **Section 3.4.4 of the EA**, the only state or federal threatened, endangered, or special status species that was identified to be within the vicinity of the project study area is the state and federally listed swamp pink (*Helonias bullata*). A presence/absence survey and habitat assessment for swamp pink was conducted by DelDOT in June 2017. No swamp pink individuals were found and the wetlands within the project study area were determined to be unsuitable for swamp pink. Further coordination will be conducted with resource agencies during the 404/401 permitting process.*

Comment #3: Lauren DeVore, Environmental Planner III. Delaware Department of Natural Resources and Environmental Control (DNREC) Division of Air Quality (DAQ). State Street Commons, 100 W. Water Street, Suite 6A, Dover, DE 19904. (302) 739-9437. Lauren.Devore@state.de.us. June 28, 2018.

Comment (email): Good Afternoon, All,

As we were reviewing current transportation projects two weeks ago, we received notice of the availability of the Park Avenue Relocation environmental assessment document.

It was through DAQ's joint review process that we uncovered some important details concerning transportation conformity and its applicability in Sussex County that we believe DelDOT should be made aware of.

Please see the following letter that explains our concerns in greater detail. A hard copy is being sent out separately through snail mail but in the essence of time, here is the emailed copy.

As a cooperating agency in the review process, DNREC DAQ is committed to working collaboratively with external agencies.

Please let us know if you have any questions or concerns and we will do our best to address them.

Comment (letter) *signed by Valerie Gray, Acting Program Manager II, DNREC Division of Air Quality, State Street Commons, 100 W. Water Street, Suite 6A, Dover, DE 19904. (302) 739-9402. June 22, 2018.*

Dear DelDOT Review Committee,

DNREC's Division of Air Quality (DAQ) respectfully submits this comment letter in response to one of DelDOT's recent transportation projects, the Park Avenue Relocation project. The project involves relocating Park Avenue by moving it south in order to accommodate the planned Delaware Coastal Airport runway expansion and facilitate safe maneuvers for trucks using the U.S. 9 Truck Bypass from east of Georgetown of U.S. 113.

DAQ's review of the Park Avenue Relocation project uncovered the following statement on Page 3-13 of the Environmental Assessment document:

*"EPA promulgated the transportation conformity rule (40 CFR Parts 51 and 93) pursuant to requirements of the CAA. The rule **only** applies in EPA **designated non-attainment or maintenance areas for PM*** (40 CFR 93.102 (b)) (EPA, 2015a). As discussed further in **Section 3.1**, the Project is located in an attainment area for PM; therefore, Transportation Conformity does not apply."*

*Bolded for emphasis

The statement above implies that transportation conformity applies only in areas designated nonattainment or maintenance for particulate matter. However, 40 CFR 93.102 (b) "Geographic applicability" (1) clarifies that transportation conformity provisions apply in nonattainment and maintenance areas for all "transportation-related criteria pollutants for which the areas is designated nonattainment or has a maintenance plan" and that those provisions are also to include ozone and its precursors, nitrogen oxides (NOx) and volatile organic compounds (VOCs).

Sussex County was designated as marginal nonattainment for the 2008 ozone NAAQS and as such has an established 2008 Reasonable Further Progress (RFP) Motor Vehicle Emissions Budget (MVEB) at 12.86 (NOx) and 7.09 (VOC) tons per year (TPY), respectively. While Sussex County air quality data has recently measured attainment of the 1997 and 2008 ozone NAAQS, official redesignation cannot occur without the submittal of a redesignation request and 10 year maintenance plan under 40 CFR §51.1118.

In consideration of the above mentioned material, Sussex County is still designated nonattainment for the 2008 ozone standard and therefore, transportation conformity requirements still remain applicable as do obligations for subsequent conformity analyses.

DNREC DAQ is committed to working collaboratively with external agencies. DAQ has knowledge and experience implementing state and federal air quality regulations and is open to providing technical support, including serving as a resource to help guide the environmental review and assessment process where feasible.

We thank you for your time and consideration of this information. Please feel free to reach out to Lauren DeVore with any questions or concerns regarding the details provided in this letter at (302) 739-9402.

Regards,
Valerie A. Gray
Acting Program Manager II

Email Response from Mike DuRoss of FHWA to Lauren DeVore of DNREC:

Lauren:

The points in your letter are well-taken; we recognize ozone conformity still applies and I assume that correction will be incorporated in the document, at some point.

In addition, we need to update or clarify the document to reflect the relocation is not regionally-significant so a conformity analysis specifically for this project is not needed.

Thanks!
Mike DuRoss

Email Response from Lauren DeVore of DNREC to Mike DuRoss of FHWA:

Good Evening, Mike,

I'm glad that the points were well-taken and I continue to assist where I can.

That is great observation, Mike. Dovetailing off of your observation, to make sure that all of the boxes are checked, you all may wish to include the definition of a "regionally significant project" for added clarification (40 CFR 93.101).

"Regionally significant project means a transportation project (other than projects that may be grouped in the TIP and/or STIP or exempt projects as defined in EPA's transportation conformity regulations that is on a facility that serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network. At a minimum, this includes all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel."

Thanks for your time.

Regards, Lauren

Response: *DelDOT has coordinated with FHWA and has determined that transportation planning and programming activities in Sussex County are not affected because Sussex County was designated nonattainment for the 2008 ozone standard as a new area named "Seaford, DE." Therefore, Sussex County is not considered an orphaned area since it is doing conformity for the 2008 ozone standard.*

Comments Received from the General Public and Stakeholders

Comment #1: Dennis Winzenried. 23365 Park Avenue, Georgetown, DE 19947. (908) 930-1195. DWinzenr@wm.com. July 17, 2018.

Comment: My comments on the Environmental Assessment are as follows:

1. I feel that the EA is flawed and incomplete. The surveys that were done only involve the southern section of the project, with the exception of the noise survey. All of the data regarding natural resources, etc. does not cover the northern section of the road from Springfield Road to Route 9. There are many concerns regarding the impact on this area, including but not limited to storm water management and increased runoff from the additional pavement, and possible contamination of private wells on our residential properties-most are located in the front yards and will be impacted. There are currently ponding and flooding issues along Park Avenue during moderate to heavy rains, and none of this has been addressed in the EA.

Response: *As shown in **Figure 3-2 of the EA** and described in **Section 3.4 of the EA**, DelDOT evaluated the natural resources, as well as other resources, along the entire length of the project between US 9 to US 113. Further, as described in **Section 3.4.6 of the EA**, DelDOT will prepare a project specific erosion, sediment, and stormwater management plan that will cover all land-disturbing activities associated with the project. This applies to the entire project corridor, from US 9 to US 113. DelDOT's practice is to maintain both water quality and quantity post-development equal to or better than pre-development, as described in the current guidance, *Erosion and Sediment Control and Stormwater Management Design Guide*.*

2. The noise study also indicated that 31 residential properties will see increased noise levels above the requirement for remediation, but remediation is not possible. Based on these facts, there will be significant impact on quality of life and property values for the residents on the northern section of Park Avenue, and the finding of no significant impact by the EA is simply not true.

Response: *As described in **Section 3.6 of the EA**, noise impacts were identified; however, given the right-of-way limitations and driveway access requirements, it was determined that it would not be feasible and reasonable to construct noise walls. This finding is in accordance with DelDOT's Noise Abatement Policy, which is summarized at www.deldot.gov/programs/highway_noise.*

3. Also the fact that the alternate route utilizing Springfield Road proposed by the residents and several public interest groups was not evaluated or even considered indicates that the planning for this project is incomplete and flawed, and the project is not ready to move forward to the next stage. I would be willing to meet with any and all parties to discuss my concerns.

Response: *Section 1.1.2 of the EA describes the development of the study area based upon existing and proposed land use and Section 1.3 of the EA describes the project needs, noting that the existing truck route has several turning movements that hinder traffic operations. Utilizing Springfield Road would add additional turning movements, as well as distance to the truck route, which was one of the screening criteria, as described in Section 2.2 of the EA. A cursory review was performed on additional alternatives suggested by the public such as utilizing Springfield Road; however, those alternatives either did not meet the purpose and need and/or had greater impacts than alternatives already under consideration.*

Comment #2: Sheron and Chanel Sturgis. 23568 Saulsbury Lane, Georgetown, DE 19947. ccbeckwith@comcast.net. July 16, 2018.

Comment (email): I am writing to express our position of the proposed Park Ave. Relocation project as we understand that comments have to be submitted before 5pm on tomorrow, 7/17/18. My husband and myself, along with our three younger daughters have lived in our home for about eight years. Our address is 23568 Saulsbury Ln., Georgetown, DE. We are landowners and have concerns about the relocation. Our understanding is that one of the proposed changes is that turn lanes will be put in place, along with other possible changes to the intersection. Our back yard faces the Lewes-Georgetown Highway. If these changes are put in place, we would be directly impacted with increased noise, safety issues, lack of privacy, probable loss in property values, potential loss of property, etc. Can you please let us know exactly how what changes are being proposed for the intersection and how this would directly impact us?

There was also a mention of an option to realign U.S. Rt. 9 to tie into French Rd/Shingle Point Rd intersection. We do not support either proposal. The 2nd mentioned option would run directly through our housing development. Please consider this input.

Response: *Section 1.3.1.1 of the EA notes that the intersection of US 9 and Park Avenue was included in DelDOT's 2012 Hazard Elimination Program (HEP, Site AA). Improvements at this intersection are necessary to meet the primary purpose and need of improving traffic operations and safety. Preliminary traffic analysis indicates that the addition of an acceleration lane along eastbound US 9 may aid in meeting this need by providing safer and more efficient means to complete the turning movement from northbound Park Avenue onto eastbound US 9. Improvements would include widening the existing shoulder and regrading the existing ditch to accommodate the acceleration lane. Owners of property that would require right-of-way acquisitions or easements would be contacted by DelDOT well in advance of construction and will be compensated for impacts through an appraisal and negotiation process. Compensation will be provided for any portion of property deemed necessary for construction as well as for the impact or relocation of any existing features within those areas.*

While this location was not included in the noise analysis, based on the stated commenter's concern, the noise at the commenter's identified location was assessed for noise impacts, it was determined that the projected noise levels will not exceed the residential impact threshold of 66 dBA or an increase of 12 dBA over existing sound levels. Existing sound levels in the yard closest to the noise source (U.S. 9) at 23568 Saulsbury Lane were estimated to be 64 dBA, and future No Build and Build sound levels were estimated to be 65 dBA.

While commenters have suggested other alternatives that would have the truck route use French Road instead of Park Avenue, these alternatives were not evaluated or considered since they would involve additional turning movements and would extend the length of the truck route.

Attachment B

Signed Programmatic Agreement

PROGRAMMATIC AGREEMENT (PA)

**AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE DELAWARE STATE HISTORIC PRESERVATION OFFICE,
AND THE DELAWARE DEPARTMENT OF TRANSPORTATION**

**REGARDING IMPLEMENTATION OF THE
PARK AVENUE RELOCATION PROJECT,
SUSSEX COUNTY, DE**

**STATE CONTRACT NUMBER: T201304601
FEDERAL AID NUMBER: STP-S318(03)**

WHEREAS, the Federal Highway Administration (FHWA) with the Delaware Department of Transportation (DelDOT) propose to improve Park Avenue (US 9 Truck Route), including partial relocation, from US 9 to Arrow Safety Road and US 113 in Sussex County, Delaware, hereon referred to as the “Project”, (**Attachment A**); and

WHEREAS, the FHWA in consultation with the DelDOT and the Delaware State Historic Preservation Office (DE SHPO) has established the Project undertaking’s Area of Potential Effect (APE), as defined in 36 CFR 800.16(d), as those areas within the Limit of Construction (LOC), Temporary Construction Easements (TCE), Permanent Easements (PE), Right of Way (ROW), and adjacent or contiguous properties where visual effects may occur (**Attachment B**); and

WHEREAS, during development of the Environmental Assessment for National Environmental Policy Act (NEPA) compliance, the FHWA selected Alternative 6 as the preferred alternative for the Project (**Attachment C**); and

WHEREAS, the Project has the potential to cause adverse effects to historic properties within the project area and is subject to Section 106 of the National Historic Preservation Act (NHPA) of 1966, (54 U.S.C. § 300101 ET SEQ.), as amended, and its implementing regulations under 36 CFR Part 800; and

WHEREAS, the FHWA, in consultation with the DelDOT and the DE SHPO, proposes to develop this Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b) to provide for the ongoing review of the Project, the completion of the identification and evaluation of historic properties, assessment of the potential for adverse effects on historic properties, and consultation to resolve any adverse effects on historic properties; and

WHEREAS, the FHWA has elected to phase the identification and evaluation of archaeological historic properties as provided in 36 CFR 800.4(b)(2), but will ensure that DelDOT completes the process in a timely manner, to allow practical opportunities to avoid or minimize adverse effects to historic properties, as stipulated under this agreement; and

WHEREAS, the DelDOT, in consultation with the FHWA and the DE SHPO, has conducted a cultural resource survey within the Project APE to identify and evaluate above-ground architectural properties that are over 45 years of age and may be eligible for listing on the National Register of Historic Places (NRHP); and

WHEREAS, the FHWA, pursuant to 36 CFR Part 800.4(a)(2), has determined that within the APE, the following property is eligible for listing in the National Register of Historic Places: Junction and Breakwater Railroad (S04965); and

WHEREAS, the FHWA and DelDOT in consultation with DE SHPO have determined that this Project, as currently conceived, will have no effect on the Junction and Breakwater Railroad (S04965) as defined in 36 CFR 800.16(i); and

WHEREAS, the FHWA has determined that the Project may affect as yet unidentified historic properties that have not been subject to prior cultural resource investigations, such as areas that are associated with proposed alignment modifications or other Project-related ancillary activities including, but not limited to, stormwater management facilities, wetland mitigation sites, reforestation areas, staging, stockpiling and access areas, and disposal sites, and that the APE may need to be revised to consider such areas; and

WHEREAS, the FHWA has contacted the Delaware Nation, the Stockbridge-Munsee Community Band of Mohican Indians, and the Delaware Tribe of Indians, hereafter referred to as the Federally Recognized Indian Tribes to determine their interest in being a consulting party for this project. The Stockbridge-Munsee Community formally responded on October 24, 2017 that they do not need to be consulted further on this project. The Delaware Tribe formally responded on November 30, 2017 and the Delaware Nation formally responded on November 7, 2017 and both would like to consult on this project; and

WHEREAS, the FHWA has afforded and will continue to afford the public an opportunity to comment on the effects of the Project undertaking on historic properties through the National Environmental Policy Act (NEPA) of 1969, as amended; and through DelDOT's Public Involvement Procedures; and

WHEREAS, as part of the above public outreach DelDOT has contacted the Nanticoke Indian Association and the Lenape Indian Tribe of Delaware, hereafter referred to as the State Recognized Indian Tribes as potentially interested parties. DelDOT will continue to coordinate throughout this project with the State Recognized Indian Tribes as an interested party for all Native American archaeological sites and above ground resources that will be adversely impacted by the project; and

WHEREAS, the FHWA and DelDOT have notified the Advisory Council on Historic Preservation (ACHP) of the Project's potential to adversely affect historic properties on October 20, 2017 and again on January 23, 2018 to formally invite them to be a consulting party. The ACHP declined to participate in the consultation per letter dated May 9, 2018. However, if through the process outlined in the PA, the signatories find that historic properties may be adversely affected later in time, coordination with the ACHP may resume; and

WHEREAS, the DelDOT participated in the consultation, has responsibilities for implementing stipulations under this PA, and has been invited to be a signatory to this PA;

NOW, THEREFORE, the FHWA, the DelDOT and the DE SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the potential effect of the undertaking on historic properties, and if need be, to mitigate for Adverse Effects.

STIPULATIONS

The FHWA shall ensure that the following stipulations are implemented:

I. Archaeological Resources

A. Identification and Evaluation Survey

Prior to starting construction or other ground-disturbing activities, DelDOT in consultation with the DE SHPO and the Federally Recognized Indian Tribes who are consulting parties, shall conduct identification (Phase I) archaeological surveys within the APE, and will determine if identified sites will require a Phase II level archaeological survey to evaluate their National Register of Historic Places eligibility. Evaluation Studies (Phase II) may require additional background research and/or additional field excavations. All surveys shall conform to the requirements of Stipulation VI. of this PA.

DelDOT shall prepare reports on findings of the archaeological identification/evaluation surveys and shall submit the reports to the DE SHPO and the Federally Recognized Indian Tribes who are consulting parties for their review and concurrence. Upon receipt of the document, the review period will be thirty (30) days. FHWA and DelDOT will take into account comments and will recommend any next steps.

During the Evaluation Studies (Phase II), FHWA and DelDOT shall apply the National Register criteria (36 CFR 60.4) in accordance with 36 CFR 800.4(c), taking into account applicable historic contexts and management plans developed for Delaware's historic and prehistoric archaeological resources.

If FHWA and DelDOT determine that any of the National Register criteria are met, and the DE SHPO agrees, the archaeological site(s) shall be considered eligible for the National Register. If FHWA and DelDOT determine that the National Register criteria are not met, and the DE SHPO agrees, the archaeological site(s) shall be considered not eligible for the National Register.

Based on the Evaluation Studies (Phase II), should a signatory to this agreement not agree on the eligibility determination of an archaeological site(s), the DelDOT and FHWA shall obtain a determination from the Secretary of the Interior, pursuant to 36 CFR 800.4(c)(2), 36 CFR 63.2(c) and 63.3(d).

B. Effect Determination/Mitigation

If eligible archaeological sites are identified and affected within the APE, DelDOT will make a reasonable effort to avoid these sites or to minimize impacts to them. If the eligible sites cannot be avoided, DelDOT will apply the Criteria of Adverse Effect in accordance with 36 CFR Part 800.5.

If listed or eligible Native American archaeological sites are identified and affected within the APE, FHWA will consult with the Federally Recognized Indian Tribes who are consulting parties.

If the project will have an adverse effect on archaeological sites, DelDOT in consultation with the DE SHPO and the Federally Recognized Indian Tribes who are consulting parties as appropriate, shall develop a treatment plan. The treatment plan may include elements of data recovery and/or an alternative mitigation plan.

DelDOT shall submit the treatment plan to the FHWA, DE SHPO, other interested or consulting parties that may be identified, including the Federally Recognized Indian Tribes, for their review and comment. Upon receipt of the document, the review period will be thirty (30) days. Following thirty (30) days, DelDOT will take into account any comments, and will recommend any next steps to the FHWA and DE SHPO.

Should data recovery investigations be warranted, DelDOT and FHWA shall ensure that a data recovery plan is developed in consultation with the DE SHPO, and other consulting or interested parties, including the Federally Recognized Indian Tribes. The plan shall specify, at a minimum:

- the property, properties, or portions of properties where data recovery is to be carried out, and any property that will or may be destroyed without data recovery;
- research questions to be addressed through data recovery, with an explanation of their relevance and importance;
- the research methods to be used, with an explanation of their relevance to the research questions;
- the methods to be used in analysis, data management, and data dissemination, including a schedule;
- a provision for assessing materials that may be in need of conservation;
- proposed disposition of recovered materials and records;
- proposed methods for involving the interested public in the data recovery, and for disseminating the results of the work to the interested public;
- a proposed schedule for the submission of progress reports to the DE SHPO; and
- provisions to meet on-site in order to evaluate the success of the initial fieldwork phase of any data recovery program, and near the end of the fieldwork efforts to validate substantial completion.

If the agreed-upon treatment plan includes preservation in place of all or part of an eligible site, FHWA, DelDOT and DE SHPO in consultation with the Federally Recognized Indian Tribes who are consulting parties, shall determine the need for and negotiate the terms of any legal instruments that would ensure long-term preservation or protection of the site. Any such legal instrument shall include, at a minimum, the following elements:

- a clearly defined list of allowed uses and prohibited uses of the site; and

- an acknowledgement that protection measures are being instituted in order to minimize or mitigate the Project's adverse effects to a National Register-listed or -eligible property; and
- a prohibition on any party, its successors, heirs or assigns, from terminating, modifying, altering or otherwise setting aside any such legal instrument unless the party, prior to taking such action, first provides the signatories to this PA with written justification for termination, and consults with the signatories to develop a new treatment plan to address the potential adverse effects pursuant to 36 CFR 800.5, regardless of whether the term of this PA has expired or not.

When and/or if an alternative mitigation strategy is chosen and approved by the DE SHPO, FHWA, and DelDOT, it may include but is not limited to: acquisition and protection of portion(s) of the site, analysis and synthesis of past data accumulated through either DE SHPO, FHWA, and DelDOT projects, updating the relevant DE SHPO and DelDOT archaeological websites and GIS databases, development of historic and prehistoric contexts and preservation priorities, statewide predictive models, development of travel or informational displays with the cultural resource work for this Project, oral histories from the project APE, documentaries about the history of the APE, virtual tour/website about the archaeological sites being mitigated in the APE, and improved archaeological data management and access for both DE SHPO and DelDOT.

DelDOT will complete all necessary data recovery fieldwork prior to commencing construction in the site areas. Alternative mitigation may or may not be completed prior to commencing construction in the site areas.

DelDOT shall provide all draft and final archaeological reports and public information materials to the DE SHPO for review and comment. DelDOT will take into account any comments received. All final reports shall meet the Secretary of the Interior's standards and Guidelines for Archaeological Documentation (48 FR 44734-37), while also satisfying the DE SHPO's guidelines for archaeological surveys or investigations.

Should any Native American archeological sites be identified, DelDOT will also provide copies of relevant draft and final reports and public information materials to the Federally Recognized Indian Tribes for review and comment, and will take into account any comments the Federally Recognized Indian Tribes provide.

C. Public Involvement:

If mitigation is necessary, DelDOT will prepare a public participation plan and public information materials. Before releasing materials to the public, DelDOT shall submit the proposed action plan(s) with any materials to the FHWA, DE SHPO, and other consulting or interested parties, including the Federally Recognized Indian Tribes, for their review and comment. Upon receipt of the materials, the review period will be thirty (30) days. Following thirty (30) days, DelDOT will take into account any comments received, and will recommend any next steps, if necessary, to the FHWA, and DE SHPO.

The public participation plan may include, but is not limited to archaeological site tours for the public and educational groups. The specific public outreach materials produced will be

determined individually for each site for which mitigation is necessary and may include, but are not limited to pamphlets, videos, historical markers, brochures, websites, exhibits, displays for public buildings, booklets on the history or prehistory of the project area, lectures or presentations at academic conferences, and/or public institutions such as schools and historical societies.

DelDOT shall distribute the public information materials to other consulting parties and interested parties, local schools, historical societies, libraries, senior centers, museums and/or other venues and individuals deemed pertinent in consultation with the DE SHPO, and FHWA.

D. Curation

DelDOT shall ensure that all records and materials resulting from the archaeological investigations will be processed, prepared for, and curated in accordance with 36 CFR Part 79 and the Division of Historical and Cultural Affairs' (the Division) "Guidelines for the Curation of Archaeological Collections" (2001) or its successor. These records and materials shall be curated at the Division, or its designee, following the policies of the institution, except as may be provided for under the following paragraph.

As part of the Public Involvement efforts outlined in Stipulation I.C. of this Agreement, the FHWA, DelDOT and DE SHPO will consult to determine if any archaeological materials may be loaned to a public museum or other public institution for the purposes of exhibit or research, following the Division's loan policy and procedures. Such loans and exhibits may occur only after the curatorial procedures, referenced in the first paragraph in this stipulation, have been completed. As deemed appropriate by FHWA, DelDOT, the DE SHPO, the Federally Recognized Indian Tribes and other consulting or interested parties will be consulted concerning curation and any public exhibition of artifacts.

E. Discovery of and Treatment of Human Remains and Burials

DelDOT Environmental Studies and/or appropriate DelDOT construction engineering staff shall immediately (within 24 hours) notify the DE SHPO and FHWA of the discovery of any human remains encountered during the archaeological investigations or the project construction. DelDOT shall cease all activities that may disturb or damage the remains, and comply with the Delaware Unmarked Human Remains Act (7 Del.C. Ch. 54).

If the human remains are of Native American affiliation, then FHWA will immediately (within 24 hours) notify the Federally Recognized Indian Tribes. FHWA and DelDOT will forward information regarding Native American discoveries to the DE SHPO and the Federally Recognized Indian Tribes for review and comment. This will occur as soon as possible, within a period no longer than two (2) weeks. FHWA will request that the parties comment on the information within two (2) weeks of receipt. FHWA will then consult with the Federally Recognized Indian Tribes, the DE SHPO and DelDOT to determine an appropriate course of action in accordance with 36 CFR 800, and taking into account the above cited state law.

The DE SHPO will comply with the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) with regard to disposition of the remains and/or associated funerary objects, as applicable.

F. Residual Right of Way

The Project will require property acquisition that may or may not involve impacts to archaeological sites. Should existing right of way or lands acquired (for purposes of the Project) be later subdivided and/or declared excess right of way (to be leased, transferred, or sold), preservation covenants for that subject parcel will first be considered by DelDOT, FHWA, and DE SHPO before DelDOT takes any action to divest itself from such lands. The parties will determine if the subject parcel(s) contain, or has the potential to contain, any historic properties, and if so, determine the need for any legal instruments that would ensure long-term preservation of such properties. Any such legal instrument shall include, at a minimum, the elements defined in Stipulation I.B. of this PA. This will adequately address any reasonably foreseeable adverse effects that could occur due to transfer, lease, or sale of property purchased with Federal funds out of State ownership or control without adequate and legally enforceable restrictions to ensure long-term preservation (or mitigation) of historic properties (36 CFR 800.5(a)(2)(vii)).

II. Architectural Resources

A. Identification and Evaluation Survey

One previously evaluated National Register-eligible property, the Junction and Breakwater Railroad (S04965), is located within the APE.

DelDOT, in consultation with the FHWA and the DE SHPO, conducted a cultural resource survey within the Project APE to identify and evaluate above-ground architectural properties that are over 45 years of age and had the potential to be eligible for listing on the National Register of Historic Places (NRHP). During the Evaluation phase, FHWA and DelDOT applied the National Register criteria (36 CFR 60.4) in accordance with 36 CFR 800.4(c), taking into account applicable historic contexts developed for Delaware's architectural resources.

DelDOT prepared a report on the findings of the Architectural identification/evaluation survey and submitted the report to the DE SHPO for their review and concurrence. The survey did not identify any new above-ground architectural properties that are eligible for the NRHP. The DE SHPO concurred with these findings. In consultation with DE SHPO, one identified property, the Breakwater and Frankford Railroad (S12867), was not evaluated.

As provided for Stipulations IV. and V. of this PA, FHWA and DelDOT shall consult with the DE SHPO as project plans develop to determine if additional survey for above-ground resources is necessary, including but not limited to evaluation of the Breakwater and Frankford Railroad. All surveys shall conform to the requirements of Stipulation VI. of this PA.

If additional survey is conducted, and FHWA and DelDOT determine that any of the National Register criteria are met, and the DE SHPO agrees, the architectural resource shall be considered eligible for the National Register. If FHWA and DelDOT determine that the National Register criteria are not met, and the DE SHPO agrees, the architectural resource shall be considered not eligible for the National Register. If DE SHPO disagrees with the submitted eligibility determinations, FHWA, DelDOT, and the DE SHPO will discuss to come to an agreement on a final determination.

Based on the result of the NRHP evaluation should a signatory to this agreement not agree on the eligibility determination of an architectural resource, then DelDOT and FHWA shall obtain a determination from the Secretary of the Interior, pursuant to 36 CFR 800.4(c)(2), 36 CFR 63.2(c) and 63.3(d).

B. Effect Determination/Mitigation

DelDOT will make a reasonable effort to avoid adverse effects to the Junction Breakwater Railroad and any newly identified historic properties in the APE. If such effects to eligible properties cannot be avoided DelDOT will make a reasonable effort to minimize the effects to the eligible resources during the plan development process. After semi-final plans have been submitted, FHWA and DelDOT in consultation with DE SHPO will formally apply the Criteria of Adverse Effect to the affected eligible properties in accordance with 36 CFR 800.5, and submit a finding of effect meeting the requirements of 36 CFR Part 800.11(e). Upon receipt of the document, the review period will be thirty (30) days.

If the project will have an adverse effect on historic structures, FHWA and DelDOT, in consultation with the DE SHPO and the property owner, shall develop a mitigation plan. Options for mitigation will depend upon the nature of the adverse effect the project will have on the eligible property and may include measures to address physical property impacts or visual and/or auditory impacts. Possible mitigation measures may include landscaping features, the development of pamphlets, videos, historical markers, brochures, websites, exhibits, displays for public buildings, booklets on the history of the project area, lectures or presentations at academic conferences, and/or public institutions such as schools and historical societies.

III. Unexpected Discoveries

In the event that previously unidentified cultural resources are discovered or unanticipated effects to historic properties occur during construction, DelDOT shall instruct the contractor to cease construction in the immediate area, and immediately notify FHWA. FHWA shall comply with 36 CFR Part 800.13 by consulting with the DE SHPO. If said discovery or unanticipated effects pertain to resources of Native American affiliation, FHWA and DelDOT shall include the Federally Recognized Indian Tribes in the consultation. The FHWA will notify the DE SHPO and the Federally Recognized Indian Tribes who are consulting within one (1) working day of the discovery. The FHWA, DelDOT, and the DE SHPO will meet at the location of the discovery within forty-eight (48) hours of the initial notification to determine appropriate treatment of the discovery prior to resumption of construction activities within the area of discovery. If the affected resource is of Native American affiliation, FHWA shall first consult with the Federally Recognized Indian Tribes before implementing any such treatment option.

IV. Review of Project Plans

DelDOT shall provide copies of preliminary, semi-final, and final design plans of the Project to the DE SHPO and any other party deemed appropriate for review and comment. FHWA will notify the Federally Recognized Indian Tribes who are consulting of the availability of the plans and provide copies as requested (hard copies, CD's or electronic files depending on size and volume of plans) for their review and comment. DE SHPO and the Federally Recognized Indian

Tribes will have thirty (30) days from the receipt of materials to provide comments on the plans. FHWA and DelDOT shall take into account any comments provided.

V. Subsequent Changes to the Project

If DelDOT proposes any changes to the Project affecting location, design, methods of construction, materials, or footprint of the Project, DelDOT shall provide the DE SHPO, and other consulting parties identified later in time with information concerning the proposed changes. The DE SHPO and consulting parties will have thirty (30) days from the receipt of this information to comment on the proposed changes. DelDOT shall take into account any consulting party comments, prior to implementing such changes. Should changes occur, DelDOT, in consultation with the DE SHPO, may need to redefine the APE beyond the areas depicted in **Attachment B**. DelDOT shall consult with the DE SHPO to identify and evaluate historic buildings, structures, sites and/or districts in any newly affected areas, and assess the effects of the project thereafter, following the process outlined in Stipulations I. and II. of this agreement, or as applicable under 36 CFR 800.13.

VI. Administrative Stipulations

A. Personnel Qualifications

All cultural resource work carried out pursuant to this agreement will be performed by or under the direct supervision of a person or persons meeting at a minimum the “*Secretary of the Interior’s Standards and Guidelines*” (http://www.cr.nps.gov/local-law/Arch_Standards.htm), formerly 36 CFR Appendix A to Part 61. DelDOT’s Environmental Studies personnel will have direct authority to select and authorize any and all qualified cultural resource management firms or sub consultants to carry out this work on an as-needed basis throughout the duration of the Project.

B. Survey and Data Recovery Standards

DelDOT shall ensure that any and all cultural resource surveys and/or data recovery plans conducted pursuant to this PA are done in accordance with the *Secretary of the Interior’s Standards and Guidelines for Identification and Evaluation*, and for *Archaeological Documentation*, as applicable, and in accordance with the DE SHPO’s *Architectural Survey in Delaware* (2015, or its successor) and *Archaeological Survey in Delaware* (2015, or its successor).

Survey proposals and data recovery plans shall include a research design that stipulates: objectives, methods, and expected results; production of draft and final reports; and preparation of materials for curation in accordance with Stipulation I.D., including budgeting for initial conservation assessments and treatment. Additional requirements for data recovery plans are found in Stipulation I.B of this Agreement.

All data recovery plans shall also take into account the Advisory Council on Historic Preservation’s guidance for *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*. Reports will meet professional standards set forth by the

Department of the Interior's "*Format Standards for Final Reports of Data Recovery Program*" (42 FR 5377-79).

All data recovery plans, public outreach, or future consultation shall also follow and/or consider any supplemental guidance and provisions provided by, but not limited to, the American Association of State Highway Transportation Officials, FHWA, Transportation Research Boards, National Park Service, ACHP or recognized academic journals or professional organizations as identified by DelDOT and/or the DE SHPO.

DelDOT shall ensure that all draft and final cultural resource reports are provided to the FHWA and DE SHPO within two (2) years of the completion of any fieldwork. Draft and final cultural resource reports relevant to Native American Sites will also be provided to the Federally Recognized Indian Tribes who are consulting.

VII. Dispute Resolution

Should any signatory to this Agreement object in writing to any plans, specifications or actions proposed or carried out pursuant to this agreement, FHWA shall consult with the objecting party to resolve the objection. If FHWA determines that the objection cannot be resolved, FHWA shall forward all documentation relevant to the dispute to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will either:

- A. Advise FHWA that the ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA shall respond to the objection accordingly;
- B. Provide FHWA with recommendations, which FHWA will take into account in reaching final decision regarding the dispute; or
- C. Notify FHWA that it will comment pursuant to 36 CFR 800.7(a) and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR 800.7(c)(4) with reference to the subject of the dispute.

Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume the ACHP's concurrence in its proposed response to the objection.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; FHWA's responsibility to carry out all actions under this PA that are not the subject of the objection will remain unchanged.

VIII. Duration

This PA shall remain in force until its Stipulations have been fulfilled. This time period shall not exceed seven (7) years from the date of the final signature. If within six (6) months prior to the end of this seven year period, stipulations remain unfulfilled, the parties to this Agreement will consult to determine if extension or other amendment of the Agreement is needed. No extension or amendment will be considered in effect unless all the signatories to the PA have agreed to it in writing.

IX. Review of Implementation

FHWA, DelDOT, and the DE SHPO shall review the project annually, to monitor progress of the implementation of the terms of this PA. By agreement, DelDOT, DE SHPO and FHWA will meet in January of each year to discuss and report progress of active PA's including this project.

X. Amendments

Any party to this Agreement may propose to FHWA that the Agreement be amended, whereupon FHWA shall consult with the other parties to consider such an amendment, in accordance with 36 CFR Part 800.6(c)(7).

XI. Termination

- A. If the FHWA or DelDOT determines that it cannot implement the terms of this PA, or the DE SHPO determines that the PA is not being properly implemented, FHWA, DelDOT, or the SHPO may propose to the other parties to this PA that it be terminated.
- B. The party proposing to terminate this PA shall notify all parties to this PA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.
- C. Should all consultation fail, FHWA or the DE SHPO may terminate the PA by so notifying all parties in writing.
- D. Should this PA be terminated, FHWA shall either:
 - 1. Consult in accordance with 36 CFR 800.6(a)(1) to develop a new PA or;
 - 2. Request the comments of the ACHP pursuant to 36 CFR 800.7(a)

Execution of this PA by the FHWA, DE SHPO and DelDOT and implementation of its terms is evidence that the FHWA has afforded the ACHP an opportunity to comment on the Park Avenue Relocation Project and that the FHWA has taken into account the effects of the undertaking on historic properties.

SIGNATORY PAGE

PROGRAMMATIC AGREEMENT

**AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE DELAWARE STATE HISTORIC PRESERVATION OFFICE, AND
THE DELAWARE DEPARTMENT OF TRANSPORTATION**

**REGARDING IMPLEMENTATION OF THE PARK AVENUE PROJECT
SUSSEX COUNTY, DELAWARE
STATE CONTRACT NUMBER: T201304601
FEDERAL AID NUMBER: STP-S318(03)**

THE FEDERAL HIGHWAY ADMINISTRATION

By: **RYAN J**
ODONOGHUE
Digitally signed by RYAN J
ODONOGHUE
Date: 2018.08.02 12:03:08
-04'00'

Ryan O'Donoghue, P.E., FHWA Delaware Acting Division Administrator

Date: _____

SIGNATORY PAGE

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STATE CONTRACT NUMBER: T201304601
FEDERAL AID NUMBER: STP-S318(03)**

THE DELAWARE STATE HISTORIC PRESERVATION OFFICER

By:



Timothy Slavin, DHCA Director and State Historic Preservation Officer

Date:

8.1.18

SIGNATORY PAGE

PROGRAMMATIC AGREEMENT

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SUSSEX COUNTY, DELAWARE
STATE CONTRACT NUMBER: T201304601
FEDERAL AID NUMBER: STP-S318(03)**

DELAWARE DEPARTMENT OF TRANSPORTATION

By: 
Robert McCleary P.E., DelDOT Chief Engineer

Date: 7/23/2018

ATTACHMENT A: Alternatives Under Consideration as Part of the NEPA Process



ATTACHMENT B: Project APE with Six (6) Project Alternatives



[illegible]

Attachment C

Advertisement of the Notice of Availability of the Environmental Assessment

A message from DELDOT

Press Release -- June 12, 2018

Park Avenue Relocation Environmental Assessment Notice of Availability for Public Review and Comment
Available June 18, 2018 through July 17, 2018

Dover (Statewide) -- The Federal Highway Administration (FHWA) and the Delaware Department of Transportation (DelDOT) have prepared an Environmental Assessment (EA) for the Park Avenue Relocation project, which would improve traffic operations and safety of the existing US 9 Truck Bypass around Georgetown.

The purpose of this project is to improve the traffic operations and safety of the US 9 Truck Bypass from East of Georgetown to US 113. The existing truck route between US 9 and US 113 has several turning movements that hinder traffic operations; the roadway width is narrow and does not meet current design for a truck route; and the average number of crashes along the truck route between US 113 and US 9 are higher than the state and Sussex County averages. Secondary needs are to support economic growth, and to support federal, state, and local initiatives by focusing on improving transportation infrastructure to provide safe and convenient road access across the region and to areas zoned for business/industrial use.

The EA is a federally-required document that examines the impacts of proposed transportation projects to be built with federal funds in accordance with the National Environmental Policy Act of 1969 (NEPA) and Section 106 of the National Historic Preservation Act.

Interested persons may request a free CD of the EA and associated technical reports by calling DelDOT Community Relations at (302) 760-2080. Additionally, the EA and associated technical reports can be viewed online at: https://deldot.gov/information/projects/park_avenue_relocation/environmental_assessment

The EA is available in hard copy at the following locations:

Hard copies of the associated technical reports can be reviewed at the DelDOT addresses below upon request:

DelDOT 800 Bay Road Dover, DE 19903

DelDOT South District 23697 DuPont Boulevard Georgetown, DE 19947

Federal Highway Administration Delaware Division 1201 College Park Drive, Suite 102 Dover, DE 19904

Delaware Technical & Community College Georgetown Campus Library 21179 College Drive Georgetown, DE 19947

Written comments on the EA should be submitted by email to DelDOT Project Manager, John Caruano at John.Caruano@state.de.us or mail ATTN: Park Avenue Relocation, P.O. Box 778, Dover, DE 19903 by 5 PM on Tuesday, July 17, 2018.

Interested parties who want to request a Public Hearing should send a written request for Public Hearing to the Department within 21 days at the address above. Requests received within 21 days may be resolved by contact with the interested party and resolving the issues on an individual basis. If unresolved requests remain, a Public Hearing will be scheduled.

View full press release at: <https://www.deldot.gov/About/news/index.shtml?dc=release&id=7170>



Delaware Department of Transportation

Public Notice

1-800-652-5600 or 302-760-2080

dotpr@state.de.us

www.deldot.gov

Contact: C.R. McCleod, Director of Community Relations

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DelDOT	DelDOT	FHWA	Delaware Technical Community College
800 Bay Road	South District	Delaware Division	Georgetown Campus Library
Dover, DE 19903	23697 Dupont Boulevard	1201 College Park Drive, Suite 102	21179 College Drive
	Georgetown, DE 19947	Dover, DE 19904	Georgetown, DE 19947

Written comments on the EA should be submitted by email to DelDOT Project Manager John Caruano at john.caruano@state.de.us or mail at ATTN: Park Avenue Relocation, P.O. Box 778, Dover, DE 19903 by 5:00 pm July 17, 2018. Interested parties who want to request a public hearing should send a written request for public hearing to the Department within 21 days at the address above. Requests received within 21 days may be resolved by contact with the interested party and resolving the issues on an individual basis. If unresolved requests remain, a public hearing will be scheduled.

July 31, 2018

Sandy Barr
Cape Gazette
PO Box 213
Lewes, DE 19958

**RE: Public Notice
Park Ave. EA Notice**

Dear Ms. Barr,

Please have the attached notice published in your newspaper in the legal section on ***Tuesday, June 19, 2018 (3 columns wide x 9 inches)***. **Please email a proof to me before deadline.** Furnish an affidavit and copy of publication along with your bill for payment.

Please send bill, copy and affidavit to: ***Laurie Yanacek, Community Relations, Dept. of Transportation, P.O. Box 778, Dover, Delaware 19903.***

Sincerely,

Laurie

Laurie Yanacek
Community Relations
(302) 760-2080

lly
cc: John Caruano, Project Manager

July 31, 2018

Jane Johnson
Legal Advertising
COASTAL POINT
P.O. Box 1324
Ocean View DE 19970

RE: LEGAL NOTICE
Park Ave. EA Public Notice
Acct. # 1082/11

Dear Jane:

Please have the attached notice published in your newspaper on ***Friday, June 22, 2018*** (3 columns wide) and furnish an affidavit and copy of publication along with your bill for payment.

Please send bill, copy and affidavit to: ***Laurie Yanacek, Community Relations, Delaware Department of Transportation, P.O. Box 778, Dover, DE 19903.***

Thank you.

Sincerely,

Laurie

Laurie Yanacek
Community Relations
(302) 760-2080

lly
cc: John Caruano, Project Manager

July 31, 2018

Legal Department
Independent Newspapers
For the: Delaware State News
P.O. Box 7013
Dover, DE 19903

RE: Legal Notice
Park Ave. EA Public Notice
ACCT # 513322

Dear Janet:

Please have the attached notice published in the ***Delaware State News*** on ***Friday, June 22, 2018*** (3 column width) in the legal notice section. Please furnish an affidavit of publication and copy along with your bill for payment.

Please send the bill, publication copy, and affidavit to ***Laurie Yanacek, Community Relations, Dept. of Transportation, P.O. Box 778, Dover, Delaware 19903.***

Sincerely,

Laurie

Laurie Yanacek
Community Relations
(302) 760-2080

lly
cc: John Caruano, Project Manager

July 31, 2018

Legal Department
Independent Newspapers
For the: Milford Chronicle
PO Box 7013
Dover, DE 19903

RE: PUBLIC NOTICE
Park Ave. EA Public Notice
Acct. # 440192

Dear Janet:

Please have the attached notice published in your newspaper on ***Wednesday, June 20, 2018*** (3 columns wide) in the legal notices. Please furnish an affidavit and copy of publication along with your bill for payment.

Please send affidavit, copy of publication and bill to ***Laurie Yanacek, DelDOT Public Relations, PO Box 778, Dover, Delaware 19903.***

Sincerely,

Laurie

Laurie Yanacek
Community Relations
(302) 760-2080

lly
cc: John Caruano, Project Manager

July 31, 2018

Kim Beard
Seaford Star/Laurel Star
P.O. Box 1000
Seaford, DE 19973

RE: LEGAL NOTICE

Park Ave. EA Public Notice
Acct# 21393

Dear Kim:

Please have the attached notice published in ***The Seaford/Laurel Star*** on ***Thursday, June 21, 2018*** (3 columns wide) and furnish an affidavit and copy of publication along with your bill for payment.

Please send affidavit, copy of publication and bill to ***Laurie Yanacek, Community Relations, DelDOT, PO Box 778, Dover, Delaware 19903.***

Thank you.

Sincerely,

Laurie

Laurie Yanacek
Community Relations
760-2080

lly

cc: John Caruano, Project Manager

July 31, 2018

Sussex Countian

Box 469
Georgetown, DE 19947

RE: LEGAL NOTICE
Park Ave. EA Public Notice
ACCT #65092

To Necia:

Please have the attached notice published in your newspaper on **Thursday, June 21, 2018** (three columns wide). Please proof before deadline and furnish an affidavit and copy of publication along with your bill for payment.

Please send affidavit, proof, and bill to ***Laurie Yanacek, DelDOT Community Relations, PO Box 778, Dover, Delaware 19903.***

Thank you.

Sincerely,

Laurie

Laurie Yanacek
Community Relations
(302) 760-2081

ly
cc: John Caruano, Project Manager

July 31, 2018

Legal Department
Independent Newspapers

For the: Sussex Post

P.O. Box 7013
Dover, DE 19903

**RE: Public Notice
Park Ave. EA Notice**

Dear Janet,

Please have the attached notice published in your newspaper on ***Wednesday, June 20, 2018*** (3 columns wide) in the Legal Notice Section. Please furnish an affidavit and copy of publication along with your bill for payment.

Please send affidavit copy and bill to ***Laurie Yanacek, DelDOT Community Relations, PO Box 778, Dover, Delaware 19903.***

Sincerely,

Laurie

Laurie Yanacek
Community Relations
(302) 760-2082

lly

cc: John Caruano, Project Manager

July 31, 2018

Phyllis Maher
Gannett Newspaper Co.
THE WAVE
PO Box 1420
Bethany Beach, DE 19930

**RE: Legal Notice
Park Ave. EA Public Notice
Acct. # 10329**

Dear Ms. Maher:

Please have the attached notice(s) published in your newspaper on ***Tuesday, June 19, 2018***, (3 columns wide) and furnish an affidavit and tear sheet of publication along with your bill for payment.

Please send bill, tear sheet and affidavit to: ***Laurie Yanacek, Community Relations, Department of Transportation, P.O. Box 778, Dover, De 19903.***

Thank you.

Sincerely,

Laurie

Laurie Yanacek
302-760-2081
Community Relations

ly
cc: John Caruano, Project Manager